



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Bill 5

## FISCAL NOTE

**Drafting Number:** LLS 19-0230  
**Prime Sponsors:**

**Date:** October 1, 2018  
**Bill Status:** Opioid and Other Substance  
Use Disorders Study Committee  
Bill Request  
**Fiscal Analyst:** Bill Zepernick | 303-866-4777  
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**Bill Topic:** SUBSTANCE USE DISORDER TREATMENT IN CRIMINAL JUSTICE SYSTEM

**Summary of  
Fiscal Impact:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> State Revenue     | <input checked="" type="checkbox"/> TABOR Refund     |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer               | <input type="checkbox"/> Statutory Public Entity     |

This bill appropriates funding for jail-based substance use treatment and criminal justice diversion programs and adjusts current-year spending authority to allow the Black Market Marijuana Interdiction Unit in the Department of Public Safety to fund investigating black market opioid operations. On net, this bill decreases state revenue by a minimal amount and increases state expenditures on an ongoing basis.

**Appropriation  
Summary:**

The bill requires net appropriations totaling \$5.3 million; currently, the bill includes appropriations of \$6.6 million. See the State Appropriations section.

**Fiscal Note  
Status:**

The fiscal note reflects the bill draft requested by the Opioid and Other Substance Use Disorders Study Committee.

**Table 1**  
**State Fiscal Impacts Under Bill 5**

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	(less than \$20,000)	(less than \$40,000)
Expenditures	General Fund	\$5,297,765	\$9,713,799
	Cash Funds	(\$20,000)	(\$40,000)
	Centrally Appropriated	\$27,369	\$28,274
<b>Total</b>		<b>\$5,305,134</b>	<b>\$9,713,073</b>
<b>Total FTE</b>		<b>1.9 FTE</b>	<b>2.0 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		(less than \$20,000)	(less than \$40,000)

## **Summary of Legislation**

This bill makes several changes concerning substance use treatment for persons in the criminal justice system, including:

- requiring counties that accept state funding for jail-based behavioral health services to provide medication-assisted treatment (MAT) for persons confined in the county jail;
- appropriating \$1.7 million for jail-based behavioral health and a total of \$4.9 million for two criminal justice diversion programs in the Department of Human Services (DHS); and
- adjusting the legislative declaration to add the use of drop-off treatment services, rather than continued criminal justice system involvement, for offenders of low-level drug offense to the scope of the Substance Abuse Trend and Response Task Force; and
- adds a footnote to the FY 2018-19 Long Bill to allow the Black Market Marijuana Interdiction Unit in the Department of Public Safety to use its current funding to investigate black market opioid operations.

## **Background**

**MAT in jails and jail-based behavioral health services.** Including funding appropriated in 2018 legislation, the DHS currently receives about \$13 million to provide a range of behavioral health services in county jails. Currently, only two counties are reported to provide MAT to persons in their jails.

**Jail-based behavioral health and MAT.** The bill increases funding for two criminal justice diversion programs: the Law Enforcement Assistant Diversion (LEAD) Program, which is currently being piloted in four locations, and the Co-responder Program, which is operated in eight locations. The LEAD Program is a pre-booking diversion program. Instead of being charged and booked following an arrest, the arresting officer may identify an arrestee as a potential participant in the diversion program and connect him or her with a case manager. The Co-responder Program provides funding to local governments to establish two-person co-responder teams consisting of a law enforcement officer and a behavioral health specialist to intervene on mental health-related police calls to de-escalate situations that have historically resulted in arrest. The behavioral health specialist also assesses whether the person should be referred for an immediate behavioral health assessment.

## **Assumptions**

**MAT in jails.** The fiscal note assumes that the state will operate a centralized program that contracts with providers to provide MAT in county jails. Further, it is assumed that each month approximately 1,000 persons in jail (about 5 percent of the jail population) will require MAT at an average cost of \$350 per month.

**Jail-based behavioral health and MAT.** Based on the appropriations included in the bill and current program costs, the fiscal note assumes that the bill intends to expand the number of LEAD sites from 4 to 10 locations, and the number of Co-responder Program sites from 8 to 12. Further, it is assumed that, at full implementation, up to 150 persons involved in the diversion programs will avoid probation.

## State Revenue

This bill is expected to decrease state revenue from probation fees by up to \$20,000 in FY 2019-20 and up to \$40,000 per year starting in FY 2020-21. By increasing funding and use of criminal justice diversion programs, it is likely that the number of persons sentenced to probation will decrease. While the exact number of diversions is not known at this time, the fiscal note assumes up to 150 low-level drug offenders will be diverted annually once the bill is fully implemented. Each person on probation pays a \$50 per month supervision fee, which is deposited into the Offender Services Cash Fund. The bill may also reduce other court fees to the Judicial Department that are collected for various criminal fees and surcharges. The estimated decrease in revenue accounts for historic indigency and collection rates. This revenue is subject to TABOR.

## State Expenditures

The bill is estimated to increase state expenditures by \$5.3 million and 1.9 FTE in FY 2019-20 and \$9.8 million and 2.0 FTE in FY 2020-21. These costs primarily result from increased General Fund costs in the DHS, but the Judicial Department will also have a decrease in probation supervision costs. These impacts are summarized in Table 2 and discussed below.

**Table 2**  
**Expenditures Under Bill 5**

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>DHS - MAT in Jails</b>		
Personal Services	\$65,714	\$87,619
Operating Expenses and Capital Outlay Costs	\$5,463	\$950
MAT Services	\$2,100,000	\$4,200,000
Centrally Appropriated Costs*	\$13,059	\$16,823
FTE – Personal Services	0.8 FTE	1.0 FTE
<b>DHS - MAT in Jails (Subtotal)</b>	<b>\$2,184,236</b>	<b>\$4,305,392</b>
<b>DHS - Criminal Justice Diversion Programs</b>		
Personal Services	\$107,993	\$143,992
Operating Expenses and Capital Outlay Costs	\$10,926	\$1,900
Technical Assistance	\$45,000	\$90,000
Program Evaluation	\$165,000	\$330,000
LEAD Pilot Program Expansion	\$1,725,000	\$3,450,000
Co-Responder Program Expansion	\$1,087,500	\$1,450,000
Centrally Appropriated Costs*	\$23,982	\$30,799
FTE – Personal Services	1.6 FTE	2.0 FTE
<b>DHS - Criminal Justice Diversion Programs (Subtotal)</b>	<b>\$3,165,401</b>	<b>\$5,496,691</b>

**Table 2**  
**Expenditures Under Bill 5 (Cont.)**

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Judicial Department</b>		
Personal Services	(\$33,226)	(\$66,452)
Operating Expenses	(\$1,605)	(\$3,210)
Centrally Appropriated Costs	(\$9,672)	(\$19,348)
FTE – Personal Services	(0.5 FTE)	(1.0 FTE)
<b>Judicial Department (Subtotal)</b>	<b>(\$44,503)</b>	<b>(\$89,010)</b>
<b>Total</b>	<b>\$5,305,134</b>	<b>\$9,713,073</b>
<b>Total FTE</b>	<b>1.9 FTE</b>	<b>2.0 FTE</b>

*\* Centrally appropriated costs are not included in the bill's appropriation.*

**MAT in jails.** The DHS will have costs of \$2.2 million in FY 2019-20 and \$4.3 million in FY 2020-21 to contract with providers to provide MAT to persons confined in county jails. These costs include both the actual service costs, as well as personal services and operating expenses for 1.0 FTE to manage the program, conduct outreach with counties and providers, and other administrative tasks. The fiscal note assumes that staff will be hired on September 1, 2019, and that MAT services in jail will begin on January 1, 2020. Costs, which are summarized in Table 2 above, are prorated to reflect this implementation timeline, as well as the General Fund payday shift. These costs assume that the program will serve all persons in county jails estimated to have an opioid use disorder (see the Technical Note section and State Appropriation section for additional detail on the level of service provided under the bill).

**Criminal justice diversion programs.** The DHS will have costs of \$3.2 million in FY 2019-20 and \$5.5 million in FY 2020-21 to expand the LEAD and Co-responder diversion programs. Details for these costs are shown in Table 2 above. For the LEAD Program, it is assumed that each of the additional six program sites will have similar costs as the existing LEAD pilot sites, with operational costs of \$575,000, evaluation costs of \$55,000, and technical assistance costs of \$15,000 per site. For the Co-responder Program, each additional site is estimated to have costs of \$362,500. In addition, the DHS will require 2.0 FTE for program management and contract administration to administer the expanded programs. It is assumed that staff will be hired by September 1, 2019, the new Co-responder Program sites will begin operating on October 1, 2019, and the new LEAD sites will start on January 1, 2020. Costs in the first year have been prorated to reflect these start dates and the General Fund payday shift.

**Probation savings.** The Probation Services Division in the Judicial Department will have a reduction in costs of \$44,503 and 0.5 FTE in FY 2019-20 and \$89,010 and 1.0 FTE in FY 2020-21, assuming 150 low-level drug offenders are successfully diverted from probation. This cost savings includes personal services and operating costs, as shown in Table 2. First-year cost savings are prorated to reflect a half-year impact based on the assumed start date of the diversion programs. This savings is assumed to be split between General Fund and the Offender Services Cash Fund.

**Black Market Marijuana Interdiction Unit.** The bill gives greater funding flexibility to the Black Market Marijuana Interdiction Unit in the Department of Public Safety to also pursue cases involving black market opioids. It is assumed that this work will be conducted within existing appropriations.

**TABOR refunds.** The bill is expected to decrease state General Fund obligations for TABOR refunds by up to \$20,000 in FY 2019-20 and up to \$40,000 in FY 2020-21. Under current law and the June revenue forecast, TABOR refunds are expected to be paid in the following year via reimbursements to local governments for senior and disabled veteran property tax exemptions. This bill will not affect the amount of these reimbursements.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments and indirect cost assessments, are estimated to be \$27,369 in FY 2019-20 and \$28,274 in FY 2020-21.

## **Local Government**

The bill increases costs and workload for local governments in several ways, as discussed below.

**MAT in jails.** First, the bill requires that MAT be provided to all persons confined in county jails requiring such treatment. Counties will have an increase in workload to coordinate services with the DHS and MAT providers. Counties that do not comply with this may lose existing state funding for jail-based behavioral health services. In addition, if the state does not fully fund the provision of MAT as estimated in this fiscal note, counties would be required to pay for these services in order to comply with the bill.

**Criminal justice diversion programs.** Second, local governments, including municipalities, counties, and district attorneys may have additional costs and workload to participate in the expanded criminal justice diversion programs under the bill. It is assumed that costs for participating local governments will be offset by funding provided by the state. Some costs may be reduced if offenders are diverted from jail or the criminal justice system altogether. Local government participation is voluntary.

## **Technical Note**

As described in the Local Government section, the bill may impact funding to counties for jail-based behavioral health services if MAT is not provided to all persons in jails requiring such treatment. However, the bill does not clearly separate out the expectations for funding MAT treatment between the state and counties. Based on the estimated need, the included appropriation is likely not enough to provide services to all persons. If the state does not fully fund this, then counties may be responsible for making up the difference.

Concerning the criminal justice diversion programs, the appropriations included in the bill are intended to reflect the additional number of program sites described in the fiscal note Assumptions section. However, the included appropriations do not account for various administrative costs or the likely implementation timeline assumed in this fiscal note.

## **Effective Date**

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

## **State Appropriations**

For FY 2019-20, the bill requires the following appropriations to the DHS:

- \$2,171,177 General Fund and an allocation of 0.8 FTE for MAT services in jails;
- \$2,053,919 General Fund and an allocation of 1.6 FTE for the LEAD Program; and
- \$1,087,500 General Fund for the Co-responder Program.

For FY 2019-20, the bill also requires a reduction in appropriations to the Judicial Department of \$34,831 and 0.5 FTE, of which \$20,000 is from the Offender Services Cash Fund and \$14,831 is General Fund.

As drafted, the bill currently includes the following appropriations to the DHS for FY 2019-20:

- \$1,700,000 General Fund for MAT services in jails;
- \$3,450,000 General Fund for the LEAD Program; and
- \$1,450,000 General Fund for the Co-responder Program.

## **State and Local Government Contacts**

Counties	District Attorneys	Human Services	Information Technology
Judicial	Public Safety	Sheriffs	